CWP No. 17419 of 2006

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of decision: 16.04.2007

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1. CWP No. 17419 of 2006

Karan Dhiman

.... Petitioner

Versus

Punjab Technical University and others.

.... Respondents

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2. CWP No. 18737 of 2006

Supriya Punia.

.... Petitioner

Versus

Punjab Technical University and others.

.... Respondents.

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3. CWP No. 3560 of 2007

Rupinder Singh.

.... Petitioner

Versus

Punjab Technical University and another.

.... Respondents.

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MRS.JUSTICE NIRMAL YADAV

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Present:- Mr.G.S.Sandhawalia, Advocate, for the petitioner in CWP No. 17419 of 2006.
Mr. O.P.Hoshiarpuri, Advocate, for the petitioner in CWP No. 18737 of 2006.
Mr. Narender Hooda, Advocate, for the petitioner in CWP No. 3560 of 2007.
Mr. Anupam Gupta, Advocate, for Punjab Technical University.
Mr. R.S.Bajaj, Advocate, for Lovely Institute of Technology.

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Nirmal Yadav, J.

Vide this judgment the above mentioned three writ petitions are being disposed of together as the questions of law and facts involved therein are similar. However, the facts are taken from CWP No. 17419 of 2006.

The petitioner while appearing in first paper of Machine Design (Part-II) of 6th semester of Bachelor of Technology, held on 26.5.2006, was found in possession of a mobile phone in switched off mode, during the checking conducted by the Flying Squad of the respondent-University. The said phone was confiscated but the petitioner was allowed to continue with his examination. Proceedings of unfair means case were initiated against him. Thereafter petitioner also appeared in rest of the papers. He was associated by the authorities in the proceedings conducted before the Unfair Means Committee. During the proceedings petitioner admitted being in possession of the mobile phone but explained that he did not use the same for the examination purposes. After the conclusion of inquiry by the Committee, authorities passed the impugned order Annexure P/8 dated 8.8.2006. Petitioner has been disqualified from appearing in any examination of the University for a period of two semesters and result for all the subjects in which he appeared in May/June, 2006 also stood cancelled. He was also debarred from attending the classes. It was further ordered that he may appear in examinations in May/June, 2007 for which he was eligible in May/June, 2006.

Against the said order petitioner filed an appeal before the Vice Chancellor on 22.8.2006. Since no order was passed in the said appeal, petitioner filed CWP No. 15800 of 2006. In the said writ petition this Court

directed the appellate authority to decide the appeal within four weeks. The appeal was rejected vide order Annexure P/13 dated 27.10.2006. Hence the present petition.

During the pendency of the writ petition at the motion stage, petitioner was provisionally permitted to appear in the examination of Subject of Machine Design Paper Part-II (6th Semester) scheduled to be held on December 18, 2006, subject to the final decision of the writ petition.

Learned counsel for the petitioners submitted that there is no evidence on record that the petitioners were found in possession of mobile phones with any malafide intention to use the same during examination. The learned counsel referred to clause 9 of the Regulations provided for prevention, punishment and procedure concerning cases of misconduct and use of unfair means, hereinafter referred to as the `Regulations', and argued that if the seized material cannot be of assistance to the candidate, then no action is required to be taken. Clause 9 of the Regulations is re-produced as under:-

> "9. If during a University examination, a candidate is found having in his/her possession or accessible to him/her paper books, notes or other material, which do not relate to the subject of the examination of the day and which could not possibly be of any assistance to him/her, no action shall be taken against him/her. The Superintendent shall nevertheless promptly report the case to the Registrar and all the papers shall be sent alongwith the report.
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> **Note:** The registrar need not report such a case to the Committee, unless he disagrees with the report of the Centre Superintendent."

He further referred to Clause 12 of the afore-mentioned Regulations and

argued that if a candidate has any material in his possession out of inadvertence, he could be debarred from passing in that paper and the petitioner's case would fall under this clause. Accordingly, only a paper in which he was appearing and found in possession of mobile phone, could be cancelled. Clause 12 reads as under:-

> "12. If during a University examination, a candidate is found having in his/her possession of notes which could be of assistance to him/her in the examination but he/she has not made use of the same and if the Committee is satisfied that these papers, book or notes, as the case may be, remained with the candidate out of inadvertence, he/she may as a disciplinary measure and implication of moral turpitude be debarred from passing in that paper."

Learned counsel further argued that Unfair Means Committee while passing the impugned order Annexure P/8 has not referred to any such material or evidence which could prove that the mobile phone was used for unfair means, in or in relation to the examination. The Committee has also not given any finding that the mobile phone was used during the examination.

On the other hand, learned counsel for the respondents argued that the conduct of the petitioners had been thoroughly examined by the Unfair Means Committee and thereafter they were found to be guilty. The matter was considered by the Appellate Authoritiy also and it was found that the candidates had themselves admitted being in possession of mobile phones.

On careful consideration of the rival submissions, we are of the view that in the present case there is no evidence before the Unfair Means

Committee that mobile phone was used by the petitioner for any unfair means in the examination, and therefore, it would not be covered by any of the Regulations. In the present cases the candidates were found in possession of the mobile phones and they did not make any effort to conceal those instruments. Admittedly, in all the cases, the mobile phones were found in switched off conditions, which could have been in possession of the candidates inadvertently. The Regulations clearly provide that the candidates should have been in possession of the papers relevant to the examination and not any other material. Moreover, if the mobile phones were kept concealed, it could be presumed that the same were for some malafide intention. Since it is not proved that the mobile phones were used as unfair means during the examinations, therefore, mere possession of the mobile phones in switched off mode would not attract any Regulations referred to above,

Consequently, all these writ petitions are allowed. The impugned orders disqualifying the petitioners from appearing in the papers are quashed and the respondents are directed to declare the results of the petitioners of the respective papers.

(Nirmal Yadav)
JUDGE

(Jasbir Singh)
JUDGE

April 16, 2007.
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